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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,591	09/21/2001	Monte C. Magill	OUTT-009/01US	5454

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EXAMINER

EDWARDS, NEWTON O

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 03/05/2002

2

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1 - 25 is/are pending in the application.
- ☐ Of the above claim(s) 1 - 4 and 6 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 5 and 7 - 16, 19 - 25 is/are rejected.
- ☒ Claim(s) 17, 18 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4 and 6, drawn to a fiber having a temperature regulating material, classified in class 428, subclass 372.
- II. Claims 5, 7-14, 15-20, drawn to a sheath core fiber, classified in class 428, subclass 373.

If group I. is elected applicant is required to elect a single disclosed species for claims 8, 11 16, 17, and 20.

Inventions group I and group II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a yarn and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with William Galliani (33,885) on 1/7/02 a provisional election was made with traverse to prosecute the invention of group II, claims 5, 7-14, 15-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-4 and 6 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

In accordance to the election of species requirement William Galliani elected hydrocarbon for claims 8 and 16, polyoleifines for claims 11 and 20, and microcapsule for claims 17.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

The disclosure is objected to under 37 CFR 1.71, as being so incomprehensible as to preclude a reasonable search of the prior art by the examiner. For example, the following items are not understood:

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 5 and 7-14 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by
Pause (U.S. 6,077,597).

Pause teaches an article comprising a first emulogated fiber layer having dispersed mciropheres containing a phase change material. Pause also teaches a second elongated fiber layer joined to the first elongated layer in claim 1. Pause further teaches the microspherese comprised a paraffine hydrocarbons as claimed. See figs. 3 and 4 of Pause.

Pause first and second fiber layer can be any polymeric material which can make fabric.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 11, 12, 13, 14, 15, 20, 22, 23, 24, and 25 are rejected under 35 U.S.C. 102(b) as
being clearly anticipated by Tanaka (U.S. 5,5153,066).

Tanaka teaches a composite fiber made of polyolefins, having a thermally temperature,
color changeable material (phase A) having a phase change material at column 3.

Tanaka teaches that composite fibers include sheath core fiber of Figures 1-6. Tanaka also
teaches the phase A can be in the core in claim 8.

Tanaka still further teaches sheath core composite ration is about 50. 50.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9, 10, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka taken with Pause.

Tanaka teaches all of the claimed invention except microcapsuled hydrocarbons. Pause teaches it is well known in the art to disperse microcapsulated paraffinic hydrocarbons in fibers in order to form a energy absorbing phase change fiber.

Thus it would be obvious to one having ordinary skill in the art to combine the teaching of Pause into the sheath core fiber of Tanaka in order to provide a energy absorbing phase change fiber.

Claims 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The enclosed patent discloses the state of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Edwards whose telephone number is (703) 308-0767. The examiner can normally be reached on Monday-Friday from 7:00am to 4:30pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly, can be reached on (703) 308-0444. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5433.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

NEdwards:evh

2/26/02



N. EDWARDS
PRIMARY EXAMINER